

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE WESTERN DISTRICT OF MICHIGAN  
3 SOUTHERN DIVISION  
4

5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 v.

CASE NO: 1:12-CR-84

8 MELVIN PIERRE WARD,

9 Defendant.

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11 \* \* \* \*

12 CHANGE OF PLEA HEARING

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14

15 BEFORE: THE HONORABLE JOSEPH G. SCOVILLE  
16 United States Magistrate Judge  
Grand Rapids, Michigan  
October 19, 2012

17 APPEARANCES:

18 APPEARING ON BEHALF OF THE PLAINTIFF:

19 SEAN C. MALTBIE  
20 HEATH M. LYNCH  
Assistant United States Attorney  
21 P.O. Box 208  
Grand Rapids, Michigan 49501-0208

22 APPEARING ON BEHALF OF THE DEFENDANT:

23 PETER ALAN VANGELDEREN  
24 CHARLES E. CHAMBERLAIN, JR.  
Wiley & Chamberlain  
25 40 Pearl Street, N.W. 940 Trust Building  
Grand Rapids, Michigan 49508

KATHLEEN S. THOMAS, U.S. District Court Reporter  
410 West Michigan Avenue, Kalamazoo, Michigan 49007  
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1 Grand Rapids, Michigan

2 October 19, 2012

3 at approximately 9:07 a.m.

4 PROCEEDINGS

5 THE COURT: 1:12-CR-84; United States of America vs.  
6 Melvin Pierre Ward.

7 Defendant appears in court with counsel, Attorneys  
8 Charles Chamberlain and Peter VanGelderren. Mr. Maltbie  
9 and Mr. Lynch appear on behalf of the government. Four  
10 lawyers for a guilty plea. This is a new record.

11 All right. Mr. Chamberlain, who is going to be  
12 handling the guilty plea, you or Mr. VanGelderren?

13 MR. CHAMBERLAIN: Mr. VanGelderren, your Honor.

14 THE COURT: All right. Thank you.

15 Mr. VanGelderren, good morning. I understand that  
16 your client is here to enter a guilty plea to Count One  
17 pursuant to a written plea agreement; is that correct?

18 MR. VANGELDEREN: Yes, that is correct, your Honor.

19 THE COURT: Mr. Ward, as you know, you're in federal  
20 court because the government is bringing two criminal  
21 charges against you. Those charges are set forth in the  
22 Superseding Indictment. Have you read that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And spoken to your attorneys about it?

25 THE DEFENDANT: Yes.

1 THE COURT: Now, I'm told that you decided to plead  
2 guilty to Count One pursuant to a plea agreement; is that  
3 correct?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: You should understand that no one can be  
6 forced to plead guilty to any criminal charge. You have  
7 the right to a trial by jury on both these charges if  
8 that's what you want.

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: By the same token, if you wish to plead  
11 guilty, that's your right as well, as long as you  
12 understand what you're doing, and you're acting of your  
13 own free will. So to make sure of that, I'm going to have  
14 to ask you some questions, and the clerk will now give you  
15 an oath to respond truthfully.

16 COURT CLERK: Will you stand and raise your right  
17 hand, please.

18 MELVIN PIERRE WARD - DEFENDANT - SWORN

19 THE COURT: All right. Count One charges that from  
20 some date in March of 2010 to about March 30th, of 2012,  
21 in Kalamazoo County, that you and one or more of the other  
22 co-defendants named here knowingly and unlawfully combined  
23 and conspired with each other, and with other persons, to  
24 possess with intent to distribute, and to distribute 500  
25 grams or more of a mixture or substance containing a

1 detectable amount of cocaine, a Schedule II controlled  
2 substance. Do you understand the nature of that charge?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Generally if a person is convicted of  
5 this offense, the defendant faces a mandatory minimum of  
6 five years in prison, maximum of 40 years in prison. But  
7 in this case, the government has filed an Information  
8 informing the Court of a previous drug felony conviction.  
9 And if the Court finds that you do have a previous drug  
10 felony conviction, and in fact, you're admitting in this  
11 proceeding that you do, 2007 Van Buren County conviction,  
12 then the mandatory minimum for conviction of this offense  
13 goes up to ten years, and the maximum to life.

14 In addition, the Court must place you on at least  
15 eight years of supervised release, which is like parole.  
16 Eight years is the minimum, the maximum is life on  
17 supervision.

18 The maximum fine is \$8 million, and there's a  
19 mandatory \$100 special assessment.

20 Again, these enhanced penalties arising from the fact  
21 of a previous felony drug conviction. Do you understand  
22 the penalties you face if you plead guilty?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you have a question about that?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Now, before we go any further  
2 in this proceeding, you should understand that this case  
3 has been assigned to Judge Paul Maloney, who is a federal  
4 district judge appointed by the president for a lifetime  
5 term. You have the absolute right to have your guilty  
6 plea proceeding take place before Judge Maloney.

7 As a magistrate judge of this court, I also have the  
8 authority to take your plea with your consent. If you do  
9 consent to this procedure, then I would ask you the  
10 questions required by law, and if I find that you're  
11 acting of your own free will and that you know what you're  
12 doing, I would recommend to Judge Maloney that he accept  
13 the plea. It's going to remain up to him, however, to  
14 accept or reject the plea, accept or reject the plea  
15 agreement, and impose sentence.

16 As I said, you have the absolute right to tell me you  
17 would rather have Judge Maloney do this or you can agree  
18 to have me do it, that's up to you. Do you understand  
19 that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And Mr. VanGelderen, have you also  
22 explained this to your client?

23 MR. VANGELDEREN: I have, your Honor.

24 THE COURT: And does he wish to proceed before Judge  
25 Maloney or before me?

1 MR. VANGELDEREN: Before you, your Honor.

2 THE COURT: Is that correct, Mr. Ward?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And do you make that decision of your own  
5 free will?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Is that your signature on the consent  
8 form on the screen there?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: I find the defendant has knowingly and  
11 voluntarily consented, and we will proceed.

12 I want to go back to Count One to make absolutely  
13 sure you understand the nature of this charge.

14 You're charged under a federal law that makes it a  
15 crime for two or more people to conspire to violate the  
16 federal drug laws. Now, a conspiracy is just an agreement  
17 between two people to do something illegal. You can't  
18 conspire with yourself, you need two people to conspire.  
19 So in order to convict you of this offense, the government  
20 would have to prove certain things, which are called the  
21 elements of the offense. They have to prove these things  
22 beyond a reasonable doubt:

23 First of all, they would have to prove that two or  
24 more people made an agreement, and that the object of the  
25 agreement was to possess with intent to distribute and to

1 distribute cocaine.

2 Second, the government would have to prove that you  
3 knowingly entered into this agreement. It wasn't a  
4 mistake, you weren't tricked, but you understood that you  
5 were agreeing with other people to violate the drug laws.  
6 And you did this of your own free will, and that you  
7 entered the conspiracy with the intent to further it, to  
8 help it.

9 Next, the government would have to prove that the  
10 object of this conspiracy was indeed to distribute and  
11 possess with the intent to distribute cocaine, not some  
12 other drug. And very importantly in federal court, the  
13 government would have to prove that it was within your  
14 reasonable contemplation that there was at least 500 grams  
15 of a mixture or substance containing cocaine involved  
16 here. That you knew or had reason to know. You had  
17 reason to understand that that quantity of drugs would be  
18 involved over the lifetime of this conspiracy. Do you  
19 understand all of those things?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: And as I said, the government has the  
22 burden of proving each of these things beyond a reasonable  
23 doubt. That there was an agreement between two or more  
24 people, that you knowingly entered into this agreement,  
25 that the object of the agreement was to distribute and to

1 possess with intent to distribute the drug cocaine, and  
2 that at least 500 grams of cocaine was in your reasonable  
3 contemplation.

4 If the government were unable to prove any one of  
5 those things, then you would be entitled to be acquitted  
6 of this offense. Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: But by pleading guilty, you relieve the  
9 government of its burden of proof, because you admit that  
10 you're guilty of this offense. Do you understand that as  
11 well?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Also by pleading guilty, you give up most  
14 of the defenses that you might have to a charge like  
15 this. For example, many times in a drug case, the  
16 defendant believes that officers found the drugs through  
17 an illegal search or seizure. If the Court agreed with  
18 that, then the Court might be required to suppress the  
19 evidence of the drugs that were illegally seized at the  
20 time of trial. But by pleading guilty, you give up your  
21 ability to raise that sort of defense to this  
22 prosecution. Do you understand that as well?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now, in addition to make you subject to  
25 the enhanced penalties that we talked about, the



1 government would have to show that you were previously  
2 convicted of a felony drug offense, which means an offense  
3 that is punishable by imprisonment for more than one year  
4 under state law, and that the law that you broke  
5 prohibited a restricted conduct relating to narcotic  
6 drugs, marijuana, or other controlled substances. In this  
7 particular case, the government is contending, and would  
8 have to show to the Court, that you were convicted in 2007  
9 of a felony, for possessing cocaine in Van Buren County,  
10 Michigan. Do you understand that as well?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, if the government can show that,  
13 then as I said, the mandatory minimum penalty you face  
14 goes up to ten years here, ten years in prison, with a  
15 maximum of life imprisonment.

16 Right now nobody knows what your sentence will be.  
17 Judge Maloney will decide that at the time of sentencing.  
18 But for today's purposes, you should understand that the  
19 Court's going to sentence you to at least ten years in  
20 prison and can sentence you to any greater time. Do you  
21 understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: There is a bear possibility that we will  
24 talk about in a little while, that the Court might be  
25 asked to release the mandatory minimum here, but you

1 should not be counting on that at all in making your  
2 decision to plead guilty. In other words, you should  
3 assume that ten years will be the very least time that you  
4 are going to be receiving at the time of sentencing. Do  
5 you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: The Court must place you on at least  
8 eight years of supervised release and can impose  
9 supervised release in any amount over eight years.  
10 Supervised release is like parole. It begins when a  
11 person is released from imprisonment. During the term of  
12 supervision, the defendant is required to live up to  
13 whatever conditions the Court has set. If the Court finds  
14 after a hearing that you have violated any of the  
15 conditions of supervision, then the Court can revoke your  
16 supervision and place you back in prison for up to the  
17 term of supervision. So if you've been given, let's say  
18 ten years of supervised release, that you can go back to  
19 prison for ten years for violating the terms of  
20 supervision. Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: And that time has to be served in  
23 addition to whatever time you've already served. The  
24 Court can impose any fine from zero to \$8 million, and the  
25 Court must impose \$100 special assessment. Do you

1 understand those penalties?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Is the defendant on probation or parole  
4 now to anyone's knowledge?

5 MR. MALTBIE: Not to our knowledge, your Honor.

6 MR. VANGELDEREN: No, your Honor.

7 THE COURT: All right. Mr. Ward, we next should talk  
8 about the rights you have and the rights you give up by  
9 pleading guilty.

10 First of all, you have the right to the assistance of  
11 counsel at every stage of the case against you. Now, the  
12 Court has appointed Mr. Chamberlain to represent you  
13 throughout this case. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And Mr. VanGelderren is apparently helping  
16 in that regard. This means you have the assistance of  
17 counsel to fight these charges, if you want to fight  
18 them. You have the assistance of counsel to do that  
19 through a trial and through an appeal. Do you understand  
20 that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Are you completely satisfied with your  
23 attorney's services in this case?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Has he done everything that you've asked

1 him to do in preparing your defense?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: And have you had a full opportunity to  
4 discuss with him your decision to plead guilty?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you feel rushed or pressured in any  
7 way to make that decision?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: The law presumes that you are innocent of  
10 all charges until proven guilty. And the government has  
11 the burden of proving you guilty beyond a reasonable  
12 doubt. This is called a presumption of innocence. It  
13 protects you now and stays with you unless and until a  
14 jury finds you guilty after a trial, beyond a reasonable  
15 doubt. By pleading guilty, however, you give up the  
16 protection of the presumption of innocence. Do you  
17 understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: You have the right to persist in your not  
20 guilty plea, that means to stick with it. If you do, then  
21 you'll have a trial by jury, and the jury will decide on  
22 each count whether or not you're guilty.

23 At your trial, you'll have certain rights, including  
24 the right to counsel at every stage of the case; the right  
25 to confront and cross examine the witnesses against you

1 with counsel's help; you have the right to present a  
2 defense, this includes the right to compel witnesses to  
3 come to court to testify. You'll have the right to  
4 present evidence to the Court, and to testify in your own  
5 defense if you want to, or the right to remain silent as  
6 you desire.

7 This last right is called the right against self  
8 incrimination. This means you can't be forced to testify  
9 at trial, and neither the Court nor the jury can hold it  
10 against you if you exercise that right. Do you understand  
11 the rights you would have at a trial?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now, if you plead guilty, you will give  
14 up most of these rights. By pleading guilty, you give up  
15 your right to a trial; your right to confront and cross  
16 examine the witnesses against you; your right to present a  
17 defense and to compel witnesses to testify; and your right  
18 against incrimination. So if you plead guilty, you will  
19 not have a trial of any kind, and the only further  
20 proceeding in the case will be sentencing. Do you  
21 understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: If you plead guilty, I'm going to have to  
24 ask you questions about yourself and about what you did.  
25 Since your answers are being given under oath, you are

1 subject to a perjury prosecution if your answers turn out  
2 to be false. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you now completely understand the  
5 nature of the charge against you in Count One, the  
6 enhanced penalties that you face if you plead guilty?

7 THE DEFENDANT: Yes.

8 THE COURT: And the rights you give up by pleading  
9 guilty?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: We should next talk about the process of  
12 sentencing in federal court.

13 Mr. VanGelderren, have you explained to your client  
14 how sentencing works in federal court?

15 MR. VANGELDEREN: Yes, we have, your Honor.

16 THE COURT: And Mr. Ward, did you understand what  
17 your attorney has told you about how the Court goes about  
18 calculating the sentence?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Now, the first step in the process is for  
21 the probation officer to do an investigation and to  
22 prepare a written report called a presentence report.  
23 Both you and the government will have a chance to look at  
24 that and to object to anything that you think is untrue or  
25 unfair in the report. Do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Then on the basis of that report, the  
3 Court is going to determine a guideline range. Now, as I  
4 said, at the time of sentencing, the big issue for Judge  
5 Maloney will be what your sentence will be, and the  
6 sentencing range that he will be dealing with is ten years  
7 at the bottom and life at the top. In deciding where in  
8 that range to place your sentence, the Court will be  
9 required to consider something called the guideline  
10 range. The guideline range is a suggested range for your  
11 sentence calculated under the federal sentencing  
12 guidelines. It will be expressed in terms of months,  
13 you'll have a high end and a low end. And the Court is  
14 required to consider the guideline range, but the Court is  
15 also required to consider all of the other facts and  
16 circumstances of your case.

17 After considering everything, the Court is going to  
18 have discretion to impose a sentence that falls within the  
19 guideline range or goes above it or below it. So do you  
20 understand the idea of the Court's discretion in deciding  
21 what your sentence will be?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Now as I said before, nobody knows what  
24 your sentence will be at this point. I'm sure your  
25 attorneys have gone through the guideline book with you to

1 give you an idea of what your sentence might be. That's  
2 what defense lawyers are supposed to do. But at this  
3 point, that is just a prediction or an educated guess, and  
4 you should not be relying on it in order to make your  
5 decision to plead guilty. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Has anybody promised you what your  
8 sentence will be if you plead guilty?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: All right. Let's take a look at the plea  
11 agreement then.

12 And Mr. VanGelderren, if you'll show your client this,  
13 he signed on the last page.

14 MR. VANGELDEREN: Yes, your Honor, and we have a copy  
15 of a plea agreement with the signatures in the appropriate  
16 spot, if the Court would like that.

17 THE COURT: So what I have is not what you have?

18 MR. VANGELDEREN: I have what you have, your Honor,  
19 but we had him execute one and sent it over to the  
20 government this morning with the signatures on the right  
21 signature block.

22 THE COURT: But other than that this is identical?

23 MR. VANGELDEREN: Yes, your Honor.

24 THE COURT: All right. Mr. Ward, do you recognize  
25 your signature at the end of the plea agreement?



1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And did you read this and understand it  
3 before you signed it?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And did you review it thoroughly with  
6 your counsel before you signed it?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: I'm not going to read it back to you word  
9 for word, but I do want to make sure that you understand  
10 everything in here. And I must say that this plea  
11 agreement has just about every provision imaginable in it,  
12 so it's rather complex.

13 Paragraph 1 says that you wish to plead guilty or  
14 that you're agreeing to plead guilty, I should say, to the  
15 conspiracy charge in Count One, and to the Supplemental  
16 Information which alleges that you have a prior felony  
17 drug offense conviction. And you told me you understand  
18 that, correct?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Paragraph 2 sets forth the elements of  
21 the offense. We have been through that, and it also  
22 explains to you what a prior felony drug offense is, and  
23 we have been through that.

24 Paragraph 3 sets forth the enhanced penalties that  
25 you face if you plead guilty, and you've told me you

1 understand that, including the mandatory minimum sentence  
2 of ten years in prison, which is addressed in Paragraph  
3 4.

4 Paragraph 5 talks about supervised release, and we  
5 have been through that.

6 Now, we have not talked about the ideas in Paragraph  
7 6. In Paragraph 6, you're making a promise to the  
8 government. You are telling them that you will cooperate  
9 with all of the federal, state, and local law enforcement  
10 agencies that are interested in working with you in their  
11 efforts to investigate and prosecute crimes done by other  
12 people. You are saying here that you will give them  
13 truthful information, give them truthful statements,  
14 you'll come to court and testify truthfully or testify  
15 truthfully before the grand jury. You will give them  
16 access to any documents within your control, and  
17 essentially you'll do whatever they ask you to do within  
18 reason in order to help them in investigating and  
19 prosecuting other people.

20 Do you understand what you're promising to do here?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: All right. Then Paragraph 7 has a series  
23 of promises by the government to you.

24 First of all, Paragraph 7A says that the government  
25 will ask the Court at the time of sentencing to dismiss

1 any other charges now pending against you. And certainly  
2 if everything goes according to plan, that's what will  
3 happen. But what you must understand is that even though  
4 the formal charge is dismissed, the conduct underlying  
5 that charge does not disappear. So that means that the  
6 Court can rely on whatever conduct is alleged there, if  
7 the Court finds it to be true, in order to decide what  
8 your sentence should be on Count One. Do you understand  
9 that idea?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Okay. Well, let me give you a  
12 hypothetical situation. Let's say I'm charged with two  
13 offenses, stealing a car and bank robbery. And in the  
14 plea agreement, I agree to plead guilty to the bank  
15 robbery charge, and the government is going to dismiss the  
16 charge of stealing the car. Okay. So they dismiss the  
17 stealing the car charge, but in deciding what my sentence  
18 will be, the Court-- on the bank robbery charge, the Court  
19 can take into consideration the fact that I stole a car in  
20 connection with this robbery. So the conduct doesn't  
21 disappear, but I can't be charged separately for that--  
22 for stealing that car. Understand?

23 So that the actions don't disappear, the actions are  
24 still part of what you did or didn't do, but you can't be  
25 charged separately. Understand now?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Okay.

3 In Paragraph 7B, the plea agreement addresses one of  
4 the many decisions that the Court is going to have to make  
5 at the time of sentencing. Under the federal sentencing  
6 guidelines, the Court may reduce a defendant's guideline  
7 calculation by two levels and thereby possibly reduce the  
8 sentence if the Court believes that the defendant has  
9 accepted responsibility for what he has done. If the  
10 Court does grant the two level reduction, then the  
11 government may ask the Court to grant a third level  
12 reduction, total of three, for the defendant's entering of  
13 a timely guilty plea.

14 Now, Paragraph 7B does not promise that any of this  
15 is going to happen. It just says that the U.S. Attorney's  
16 Office will not object if the Court wants to give you the  
17 first two-level reduction, and if the Court does that,  
18 then the government will ask for a one more point  
19 reduction for a total of three, but the Court is going to  
20 decide whether or not you are entitled to these  
21 reductions. And the Court is not bound by the plea  
22 agreement, and the Court is going to basically make up  
23 it's own mind on all of these sentencing issues.  
24 Certainly the Court is going to take into consideration  
25 what is suggested here, but at the end of the day, the

1 Court is going to decide whether you get this two-level  
2 reduction for accepting responsibility and whether you get  
3 the third-level reduction.

4 So what you need to understand is if for whatever  
5 reason the Court does not accept one or more of these  
6 suggestions concerning your sentence, you'll still be  
7 bound by the plea and you won't be allowed to withdraw it  
8 for that reason. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Paragraph 7C is an inducement to you to  
11 be truthful in your statements to the government. This  
12 says that anything that you have told the government or  
13 will tell the government that they didn't already know,  
14 the government promises not to use against you at the time  
15 of sentencing in an effort to make your sentence go  
16 higher. And this is, as I said, inducement to you to be  
17 truthful with the government, because they are saying if  
18 you tell them something new that they didn't know, they  
19 are not going to go running to the Court with this  
20 information to try to make your sentence worse. However,  
21 if you tell the Court something that contradicts what you  
22 told the government, then the government reserves the  
23 right to bring that up with the Court. Do you understand  
24 that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Now, Paragraph 8 informs you of the  
2 possibility, and I underline the word possibility, that  
3 your sentence might be reduced on account of your  
4 cooperation and assistance to the government. Under  
5 Section 5K1.1 of the guidelines, the Court can reduce a  
6 defendant's sentence if requested by the government to do  
7 so on account of the defendant's cooperation and  
8 assistance with the government. And under Rule 35(b), the  
9 government can ask for this relief, even up to one year  
10 after sentence has been imposed. So a sentence that has  
11 been imposed can be reduced at the request of the  
12 government for cooperation. But you need to keep several  
13 things in mind here.

14 First of all, only the government can ask for this  
15 particular kind of relief, and the government is not  
16 promising to ask here. They are just saying we will think  
17 about it. They will consider the extent of your  
18 cooperation, and if they think that you've done enough for  
19 them, they may or may not ask the Court to do something  
20 for you. That is the first thing to keep in mind.

21 Second, even if the government asks, it's up to the  
22 Court to decide whether or not to reduce your sentence.  
23 The Court can agree with the government or it can say no,  
24 I'm not going to reduce the sentence, or it can reduce the  
25 sentence in an amount greater or lesser than the

1 government is suggesting.

2 Third, this ten year mandatory minimum is a floor  
3 below which the Court cannot go in reducing your sentence,  
4 unless the government specifically asks the Court to  
5 release that mandatory minimum. So in other words, the  
6 government can say we think you ought to reduce the  
7 defendant's sentence, but once they say we are asking you  
8 to reduce it below the mandatory minimum, then the Court  
9 can't go below ten years, even if it wants to.

10 And finally, you have to keep in mind that all of  
11 these decisions concerning your sentence and whether to  
12 reduce it are up to the Court, not up to the government,  
13 and the Court's not bound by the plea agreement, nor is it  
14 bound to go along with what the government says. So if  
15 for whatever reason the Court does not reduce your  
16 sentence, even if the government asks for it, you will  
17 still be bound by the plea and you won't be allowed to  
18 withdraw it for that reason. Do you understand all of  
19 that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: So this is nothing like a promise that  
22 your sentence is going to be reduced if you cooperate with  
23 the government. And it is certainly not a promise that  
24 the Court will go below the ten year mandatory minimum.

25 Understand all of that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: All right. Paragraph 9 informs you that  
3 the Court's going to be required to consider the federal  
4 sentencing guidelines and the guideline range, but he is  
5 not required to impose a sentence that falls within the  
6 guideline range.

7 Paragraph 10 informs the Court that there is no  
8 agreement here about your final sentence or any guideline  
9 issue, and that means both parties are free to argue at  
10 the time of sentencing for the appropriate sentence.

11 Now, Paragraph 11 is tied to the forfeiture  
12 allegation that appears at the end of the Indictment. At  
13 the end of the Indictment, the government asks the Court  
14 to enter an order forfeiting any right, title, or interest  
15 that you might have in property that is the proceeds of  
16 these illegal drug transactions or property that was used  
17 to commit or facilitate the drug transactions. And  
18 specifically the government wants to forfeit \$12,222 in  
19 currency, a Cadillac Escalade, Pontiac Montana-- I can't  
20 imagine why anyone would want a 2000 Pontiac Montana, but  
21 apparently the government wants it-- and a 2002 Cadillac  
22 DeVille.

23 And in Paragraph 11 says that you agree to disclose  
24 to law enforcement officials the whereabouts and your  
25 interest in any money, property, or other assets that is



1 either drug proceeds or was used to facilitate drug  
2 dealing, and you agree to give up any interest, any right,  
3 title, or interest that you have in these items.

4 It says specifically that you agree to forfeit all of  
5 your interest in the \$12,000 that I talked about and in  
6 the cars that are alleged here in the forfeiture part of  
7 the Superseding Indictment, and that you admit that these  
8 things were the proceeds of drug dealing or facilitated  
9 the commission of drug deals, and that you agree to entry  
10 of an order forfeiting these things. So do you understand  
11 all of that?

12 Basically this says you're giving up the \$12,000 and  
13 the cars, and you're agreeing to cooperate with the  
14 government to help them to understand and to forfeit any  
15 other property that you might have that is joint  
16 proceeds. Understood?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Paragraph 12 goes through the  
19 constitutional rights that anybody automatically gives up  
20 by pleading guilty, such as the right to a trial, we have  
21 been through that.

22 But Paragraph 13 addresses a couple of rights that  
23 you would otherwise have even though you're pleading  
24 guilty, and it says that you have agreed to limit, not  
25 give up, but substantially limit these rights. First is

1 the right to appeal.

2 In federal court, even though a defendant pleads  
3 guilty, the defendant has the right to appeal his sentence  
4 to the Court of Appeals if he believes that the sentence  
5 is either illegal or unreasonable. This says you  
6 understand that you would have the right to appeal your  
7 sentence, but that you're limiting it in significant  
8 ways.

9 First of all, it says in essence that you're giving  
10 up your right to appeal a sentence that is at or below the  
11 top of a properly calculated guideline range. So there is  
12 two parts to this. Number one, the guideline range has to  
13 be correct. The Court has to not have made any mistakes  
14 in calculating the guideline range. So if you believe the  
15 Court has made a mistake in calculating the guideline  
16 range, and you raised it at the time of sentencing, you  
17 can appeal that.

18 Second, you can appeal if the Court gives you a  
19 sentence that goes above the top of a properly calculated  
20 guideline range. So that means that you're giving up your  
21 right to appeal the sentence that falls within the  
22 guideline range or goes below it. Understand all of those  
23 ideas?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Mr. Ward, I'm getting the idea that you

1 don't want to do this.

2 THE DEFENDANT: No, I want to do this, but I didn't  
3 understand that part of the agreement.

4 THE COURT: Mr. Chamberlain, was this explained to  
5 your client?

6 MR. CHAMBERLAIN: It was, your Honor, not quite in  
7 the way the Court just explained it to him. It was also  
8 the subject of a modification in our discussions. So it  
9 could be that Mr. Ward is confused based upon a prior  
10 explanation.

11 THE COURT: Okay. And I admit that I explained it a  
12 little differently than it said here, because I like my  
13 way better, and I think it's easier to understand.

14 MR. CHAMBERLAIN: Actually, I do like your way  
15 better, and it does explain it. If I could just have a  
16 moment with him--

17 THE COURT: Sure, please do.

18 MR. CHAMBERLAIN: --I could translate between the  
19 two.

20 (Pause in proceedings.)

21 MR. CHAMBERLAIN: Thank you for the Court's  
22 indulgence. I think he understands it now, your Honor.  
23 It's just that this concept was explained two different  
24 ways, and he didn't quite understand it.

25 THE COURT: All right. Mr. Ward, I think the

1 important thing for you to understand is that you are  
2 limiting your right to appeal your sentence. And you can  
3 only appeal it on the grounds that I've set forth here,  
4 the one we talked about a minute ago, and you can also  
5 always appeal if you believe that the Court has based its  
6 sentence on any unconstitutional factor, such as your  
7 race, religion, national origin. But other than those two  
8 grounds; ground one, that the sentence is above the top of  
9 a properly calculated guideline range, or number two, it  
10 was based on an unconstitutional factor, you are giving up  
11 your right to appeal the sentence. Understand?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Then this paragraph goes on to address  
14 something called a collateral attack. A collateral attack  
15 is a challenge to a defendant's conviction or sentence  
16 that is brought after an appeal is done or after the time  
17 to appeal has expired. And again, even though you are  
18 pleading guilty, you would have the right to bring a  
19 collateral attack, which is generally limited to  
20 constitutional issues. This says you understand you have  
21 that right, but that you're giving up your right to bring  
22 a collateral attack except if you can show that your  
23 waiver of this right was involuntary by showing, for  
24 instance, that you did not have the effective assistance  
25 of counsel in agreeing to this. But other than that,

1     you're giving up your right to bring a collateral attack.

2     Do you understand that?

3           THE DEFENDANT: Yes, your Honor.

4           THE COURT: And I think the rest we have talked about  
5     or is self-explanatory.

6           Understand all of the ideas in here?

7           THE DEFENDANT: Yes, your Honor.

8           THE COURT: Other than the promises made to you here  
9     in writing, has anybody promised you anything to get you  
10    to plead guilty?

11          THE DEFENDANT: No, your Honor.

12          THE COURT: Have your attorneys promised you  
13    anything?

14          THE DEFENDANT: No.

15          THE COURT: Has the government officers or attorneys  
16    promised you anything?

17          THE DEFENDANT: No, your Honor.

18          THE COURT: The plea agreement is taken under  
19    advisement for review by the district judge.

20          All right. Mr. VanGelderen, if you and your client  
21    will step up to the lectern for allocution then, please.

22          Mr. Ward, it's time for me to ask you whether you  
23    plead guilty or not guilty to the charge against you in  
24    Count One?

25          THE DEFENDANT: Guilty, your Honor.

1 THE COURT: Next I need to make sure that you're  
2 acting of your own free will, I'll have to ask you some  
3 questions about yourself.

4 How old are you?

5 THE DEFENDANT: Thirty-four.

6 THE COURT: Where were you born?

7 THE DEFENDANT: Chicago, Illinois.

8 THE COURT: How far did you get in school?

9 THE DEFENDANT: Tenth grade.

10 THE COURT: What school was that?

11 THE DEFENDANT: Covert High School.

12 THE COURT: At some point your family moved to  
13 Michigan?

14 THE DEFENDANT: Yes.

15 THE COURT: And you dropped out of school in tenth  
16 grade?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you ever go back to school?

19 THE DEFENDANT: Yes.

20 THE COURT: Tell me about that.

21 THE DEFENDANT: I pursued and got a GED in Paw Paw,  
22 Van Buren County, Paw Paw Public Schools.

23 THE COURT: So you do have your GED. Do you remember  
24 what year you got that?

25 THE DEFENDANT: I believe in '95.

1 THE COURT: Any other schooling or training after  
2 that, trade school or anything like that?

3 THE DEFENDANT: No.

4 THE COURT: What kind of work have you done in your  
5 life?

6 THE DEFENDANT: Mainly maintenance work, janitorial  
7 work, and assembly line work.

8 THE COURT: What is the last job you had?

9 THE DEFENDANT: I was a roofer for Paw Paw Preferred  
10 Builders.

11 THE COURT: A roofer?

12 THE DEFENDANT: Yes.

13 THE COURT: When did you have that job?

14 THE DEFENDANT: Around 2009, I think, if I'm not  
15 mistaken.

16 THE COURT: Do you have any major health problems?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Are you under a doctor's care for any  
19 reason?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Do you take any prescription medications?

22 THE DEFENDANT: No.

23 THE COURT: Have you ever been treated for any mental  
24 or psychiatric problems?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: Do you believe that you have a drug or  
2 alcohol abuse problem of any kind?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Tell me about that.

5 THE DEFENDANT: I drink a lot of alcohol.

6 THE COURT: How about drugs?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: How long have you been in jail now?

9 THE DEFENDANT: A little more than six months.

10 THE COURT: So you haven't had any alcohol in the  
11 last six months?

12 THE DEFENDANT: No.

13 THE COURT: Do you feel better when you are not  
14 drinking or worse?

15 THE DEFENDANT: I feel better.

16 THE COURT: So do you believe you're in a proper  
17 frame of mind to make an important decision here today?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Have you had any drugs, legal or illegal,  
20 in the last two days?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Has anybody forced you to plead guilty?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Is your guilty plea the result of any  
25 threats or intimidation?



1 THE DEFENDANT: No, your Honor.

2 THE COURT: Are you pleading guilty of your own free  
3 will?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Now, you need to tell me in your own  
6 words what you did that makes you think you're guilty of  
7 this conspiracy charge.

8 THE DEFENDANT: In about March 2010 to March 2012, I  
9 lived in Kalamazoo, during the time I possessed, sell  
10 cocaine more than 500 grams.

11 THE COURT: Now, this doesn't charge you with just  
12 possessing and selling cocaine, it also charges you with  
13 agreeing with other people to do that. So were there  
14 other people involved with you in this cocaine business?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Who were they?

17 THE DEFENDANT: The co-defendants from my case.

18 THE COURT: All of them?

19 THE DEFENDANT: Pretty much, yes.

20 THE COURT: So tell me who is Derrick Cortez Davis?

21 THE DEFENDANT: Someone I met before. I'm not too  
22 familiar with Derrick Davis. I met him before. He lives  
23 in Chicago.

24 THE COURT: So who would you-- of these people, who  
25 would you say was most involved with you in selling

1 cocaine?

2 THE DEFENDANT: Mario Brown, Wilson, Weathersby, and  
3 a couple other people.

4 THE COURT: Okay. So let's take Mario Brown. Who is  
5 Mario Brown?

6 THE DEFENDANT: A family member.

7 THE COURT: And what was his role in this?

8 THE DEFENDANT: Supplier.

9 THE COURT: So at some point, you and Mr. Brown  
10 talked about selling cocaine?

11 THE DEFENDANT: Yes.

12 THE COURT: When did that start? When did that  
13 conversation start? In other words, whose idea was it?  
14 Did he come to you? Did you suggest it to him, what?

15 THE DEFENDANT: I purchased from him before.

16 THE COURT: And what was your arrangement with  
17 Mr. Brown concerning purchasing cocaine? Well, what was  
18 the deal? Okay. Did you have a deal with him? Was he  
19 going to give you free cocaine?

20 THE DEFENDANT: At one point in time, yes, he did.

21 THE COURT: Free cocaine?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. Then at some point did you  
24 start paying him for the cocaine?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: And did you-- Did he front it to you or  
2 did you have to pay him when you got the cocaine?

3 THE DEFENDANT: It varied, sometimes I would pay him,  
4 and sometimes I got fronted.

5 THE COURT: And when did this start? When did you  
6 start buying cocaine from Mr. Brown?

7 THE DEFENDANT: Maybe the year 2000-- '99, 2000.

8 THE COURT: And what kind of quantities would you buy  
9 from him at one time?

10 THE DEFENDANT: It varied, half ounce, ounce.

11 THE COURT: And did you purchase this cocaine from  
12 Mr. Brown for the purpose of reselling it to other people?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And did he know that when he sold it to  
15 you?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And you also mentioned Shane Lee  
18 Weathersby, who is that?

19 THE DEFENDANT: That's a friend.

20 THE COURT: And what did he have to do with all of  
21 this?

22 THE DEFENDANT: He sold drugs.

23 THE COURT: To you or for you or what?

24 THE DEFENDANT: No, for his self.

25 THE COURT: For himself?

1 THE DEFENDANT: Yes.

2 THE COURT: So did he have anything to do with your  
3 operation at all?

4 THE DEFENDANT: Besides buying drugs, that's about  
5 it.

6 THE COURT: He bought drugs from you?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. So you bought drugs from Brown,  
9 and Weathersby bought drugs from you?

10 THE DEFENDANT: And Brown.

11 THE COURT: And Brown?

12 THE DEFENDANT: Yes.

13 THE COURT: Now, was Weathersby buying drugs for his  
14 own use or was he buying drugs from you so that he could  
15 sell them to other people?

16 THE DEFENDANT: Sell to other people.

17 THE COURT: And did you know that when you sold the  
18 drugs to Weathersby?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: When did you start selling him drugs?

21 THE DEFENDANT: I know Weathersby for a long time, so  
22 I really can't actually say when I started.

23 THE COURT: Were you selling drugs in 2010, 2011?

24 THE DEFENDANT: 2011.

25 THE COURT: So do you think it's accurate to say that

1 at least 500 grams of powder cocaine went through your  
2 hands?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: And where were you living at the time? I  
5 think you said Kalamazoo?

6 THE DEFENDANT: Yes.

7 THE COURT: And were these other men also living in  
8 Kalamazoo?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Where did Brown live?

11 THE DEFENDANT: Chicago, Illinois.

12 THE COURT: So he was bringing cocaine from Chicago  
13 to you?

14 THE DEFENDANT: Back and forth, yes.

15 THE COURT: And how about Weathersby, where did he  
16 live?

17 THE DEFENDANT: Weathersby, he just moved back to  
18 Michigan, so he was staying in Kalamazoo and in Covert,  
19 Michigan.

20 THE COURT: And where was he selling the drugs?

21 THE DEFENDANT: Kalamazoo.

22 THE COURT: Kalamazoo?

23 THE DEFENDANT: Covert.

24 THE COURT: All right. The government have anything  
25 to add to the factual basis?

1 MR. MALTBIE: No, your Honor.

2 THE COURT: Has Mr. Ward talked about the principal  
3 people that the government understands were involved with  
4 him?

5 MR. MALTBIE: Yes, your Honor. Mr. Brown,  
6 Mr. Weathersby. He did mention Mr. Wilson.

7 THE COURT: He said he didn't know-- yes, he said he  
8 didn't know Mr. Davis too well.

9 MR. MALTBIE: Right. And I understand Mr. Davis is  
10 scheduled for a plea in front of this Court later today,  
11 and I think that will become clear what that role was, but  
12 that's true, Mr. Davis came in this late in the game.  
13 Essentially what happened is all of these individuals were  
14 arrested on the same-- at the same time at Mr. Ward's  
15 house in the end of March of 2012. At that time present  
16 in the house was more than 500 grams of cocaine, that's  
17 what the government knew at the time it brought the  
18 charges. Of course, Mr. Ward has explained more, and the  
19 government is aware of what Mr. Ward has explained, and I  
20 believe that it supports the factual basis for a plea to  
21 this conspiracy.

22 THE COURT: Thank you.

23 Mr. Ward, when the officers came into your house in  
24 March of this year, all of these other men were there as  
25 well?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: What were they doing there?

3 THE DEFENDANT: I was playing cards, me, Wilson,  
4 Weathersby, and another guy that was on-- we was playing  
5 cards, we was gambling. Brown, Davis, and another guy,  
6 Motten showed up, and Barry was there with us too while we  
7 was playing cards first, and Brown was-- I mean Brown,  
8 Davis, and Motten showed up.

9 THE COURT: And there was also 500 grams of cocaine  
10 in the house at that time?

11 THE DEFENDANT: Not that I knew of. I didn't know  
12 nothing about that until after.

13 THE COURT: Who had the drugs? Who had brought the  
14 drugs in?

15 THE DEFENDANT: From what I noticed, I seen a bag of  
16 drugs, and I seen Davis and Motten talking and conspiring  
17 with each other. So I'm not-- I didn't pay attention to  
18 who actually brought them in, but I seen them.

19 THE COURT: All right. Mr. VanGelderren, are you  
20 satisfied with the factual basis?

21 MR. VANGELDEREN: I am, your Honor.

22 THE COURT: Mr. Ward, after hearing everything that's  
23 taken place in court today, do you still wish to plead  
24 guilty?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Mr. VanGelderren, are you aware of any  
2 legal reason the plea should not be accepted?

3 MR. VANGELDEREN: I am not, your Honor.

4 THE COURT: All right. You can both have a seat,  
5 please.

6 I find the defendant is fully capable and competent  
7 to enter an informed plea, that the plea is made knowingly  
8 and with full understanding of the rights I've explained.  
9 That it's made voluntarily and free from any force,  
10 threats, or promises, apart from the promises in the plea  
11 agreement. I find the defendant understands the nature of  
12 the charge and the penalties provided by law, and the plea  
13 has a sufficient basis in fact. I'll therefore, recommend  
14 to Judge Maloney that he accept the plea.

15 Mr. VanGelderren, you can get the-- if you would get  
16 the presentence process started today.

17 MR. VANGELDEREN: Yes, your Honor.

18 THE COURT: With the probation office.

19 Anything more we need to do on this matter for now?

20 MR. MALTBIE: No, your Honor.

21 MR. VANGELDEREN: No, your Honor. Thank you.

22 THE COURT: All right. Thank you.

23 (At 9:55 a.m., proceedings were adjourned.)  
24  
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CERTIFICATE

I certify that the foregoing is a transcript from the  
Liberty Court Recording System digital recording of the  
proceedings in the above-entitled matter, transcribed to  
the best of my ability.

Kathleen Sue Thomas /s/

Kathleen Sue Thomas, CSR-1300

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